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11 IN THE UNITED STATES DISTRICT COURT FOR THE  
12 EASTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 KING MOUNTAIN TOBACCO CO.,  
17 INC.,

18 Defendant.

19 Case No. CV-12-3089-RMP

20 **DECLARATION OF ALLEN  
21 LEFTWICH**

22 I, ALLEN LEFTWICH, declare as follows:

23 1. My name is Allen Leftwich. I am over 21 years old and I am competent  
24 to testify about the matters set forth herein.

25 2. I am currently employed by the Alcohol and Tobacco Tax and Trade  
26 Bureau (hereafter, "TTB") as the Director, Tax Audit Division (hereafter, "TAD").

*DECLARATION OF ALLEN LEFTWICH*

1 Immediately prior to my appointment as Director, I served as Deputy Director, TAD.  
2  
3 I have been employed by TTB since July 2003.  
4

5       3. As director of TAD, I am responsible for the planning, development and  
6 monitoring of TTB's excise tax audit program for TTB's regulated industries. I have  
7 a Deputy Director, six Supervisory Audit Managers, a Special Operations Program  
8 Manager and more than 65 excise-tax auditors that report to me.

9       4. I am generally familiar with the Federal excise tax payment  
10 requirements for tobacco manufacturers in the United States. I am also familiar with  
11 TTB's record-keeping system and have access to tobacco excise tax records as  
12 needed to perform my official duties.  
13

14       5. In connection with my official duties as Deputy Director and, now,  
15 Director, TAD, I reviewed the affidavit (hereafter, "Bullwinkel Affidavit") prepared  
16 by Special Agent Matthew Bullwinkel, Federal Bureau of Investigations, in support  
17 of the search and seizure warrant executed at the premises of King Mountain  
18 Tobacco Company, Inc. (hereafter, "King Mountain") on February 16, 2011.  
19 Attached to this declaration as Exhibit A is a true and correct copy of the Bullwinkel  
20  
21 Affidavit.  
22

23       6. King Mountain currently holds a permit as a manufacturer of tobacco  
24 products. According to TTB's records, with which I am personally familiar, TTB  
25  
26

*DECLARATION OF ALLEN LEFTWICH*

1 approved King Mountain's application and issued the tobacco manufacturer's permit  
2 in 2007.

3  
4       7. The Bullwinkel Affidavit describes a transaction between King  
5 Mountain and FB Enterprises involving the sale of 22 tractor trailer loads of  
6 cigarettes.

7  
8       8. Under my supervision, TTB's TAD compared those transactions to the  
9 Federal Excise tax returns filed by King Mountain and found that King Mountain  
10 had underpaid its Federal excise tax in May and June 2010 by nearly \$9 million.

11  
12       9. According to the Bullwinkel Affidavit, a South Carolina wholesaler  
13 purchased 22 truckloads of King Mountain brand cigarettes each carrying 49,920  
14 cartons between May 2010 and July 1, 2010. This totaled to 149,760 cartons  
15 purchased in May 2010 and then 948,480 purchased in June 2010. Bullwinkel  
16 Affidavit at 67-70. The number of cartons purchased in May and June 2010 was  
17 equivalent to 29,952,000 and 189,696,000 cigarettes respectively (219,648,000  
18 cigarettes total).

19  
20       10. TAD reviewed King Mountain's Federal Excise tax returns and monthly  
21 reports for May and June 2010 to determine whether the sales to the South Carolina  
22 wholesaler were reported and tax-paid. Attached as Exhibit B are true and correct  
23 copies of King Mountain's Federal excise tax returns, TTB Form 5000.24, for May  
24  
25  
26

*DECLARATION OF ALLEN LEFTWICH*

1 and June 2010. Attached as Exhibit C are true and correct copies of King Mountain's  
 2 monthly reports, TTB Form 5210.5, for May and June 2010.  
 3

4 11. For May 2010, King Mountain reported removal of 18,061,000  
 5 cigarettes. For June 2010, King Mountain reported removal of 22,861,200 cigarettes.  
 6 These reported removal amounts are intended to represent aggregate monthly  
 7 cigarette removals. Total removals reported by King Mountain for May and June  
 8 2010 did not equal or exceed the sales to the South Carolina Wholesaler as would be  
 9 expected. The following chart compares the reported removals with the sales to the  
 10 11 South Carolina Wholesaler:

	<u>May 2010</u> (cigarettes)	<u>June 2010</u> (cigarettes)	<u>Total</u>
<b>King Mountain Report</b>	18,061,000	22,861,200	40,922,200
<b>S.C. Wholesaler Purchases</b>	29,952,000	189,696,000	219,648,000
<b>Unreported sales</b>	(11,891,000)	(166,834,800)	(178,725,800)

20 12. Even assuming that all of the reported removals were included in King  
 21 Mountain's sales to the South Carolina wholesaler, King Mountain underreported its  
 22 cigarette removals by over 175 million cigarettes during that two month period.  
 23

24 13. Section 5701(b)(1) of the Internal Revenue Code imposes a tax on small  
 25 cigarettes of \$50.33 per thousand cigarettes or \$0.05033 per cigarette. Small  
 26

*DECLARATION OF ALLEN LEFTWICH*

1 cigarettes are cigarettes weighing not more than three pounds per thousand. This  
 2 small cigarette tax rate has been in effect since April 1, 2009.  
 3

4       14. At my direction, TAD calculated the amount of additional federal excise  
 5 tax due on the cigarettes sold to the South Carolina wholesaler. Assuming King  
 6 Mountain sold all of its reported May and June 2010 small cigarette removals to the  
 7 South Carolina Wholesaler, the most favorable assumption for King Mountain, King  
 8 Mountain underpaid its Federal excise tax liability for those periods by nearly \$9  
 9 million. The following chart outlines the liability:  
 10

	<u>May 2010</u>	<u>June 2010</u>	<u>Total</u>
<b>Excise Tax Reported on King Mountain Returns (cigarettes)</b>	\$909,010.13	\$1,150,604.19	\$2,059,614.32
<b>Tax Due Based on Wholesaler Purchases (cigarettes)</b>	\$1,507,484.16	\$9,547,399.68	\$11,054,883.84
<b>Additional Tax Due</b>	<b>(\$598,474.03)</b>	<b>(\$8,396,795.49)</b>	<b>(\$8,995,269.52)</b>

23       15. If the reported removals for May and June 2010 constituted sales to  
 24 customers other than the South Carolina wholesaler, the least favorable assumption  
 25  
 26

*DECLARATION OF ALLEN LEFTWICH*

1 for King Mountain, then King Mountain would owe an additional \$11,054,883.84  
2 (219,648,000 x \$0.0533) in Federal excise taxes.  
3

4 16. Based on this analysis, TAD recommended that TTB's National  
5 Revenue Center assess the additional tax due for May and June 2010, in accordance  
6 with the assumption most favorable to King Mountain, as outlined in paragraph 14  
7 above.  
8

9 17. In the course of preparing an early draft of this declaration earlier this  
10 year, I noticed that the liability assessed for May and June 2010 in the Corrected  
11 Notice & Demand of Taxes Due/Notice of Intent to Levy dated June 11, 2013  
12 ("Corrected Notice") did not match the totals above. Our review had analyzed the  
13 entire months of May and June 2010, but the Corrected Notice only offset King  
14 Mountain's payments for the second half of each month against the additional  
15 liability. Thus the liability assessed in the Corrected Notice was an amount between  
16 the most favorable assumption in paragraph 14 and the least favorable assumption in  
17 paragraph 15. Based on my review, the NRC prepared a Second Corrected Notice  
18 that reduced the additional liability for those periods in accordance with TAD's  
19 original recommendation.  
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25  
26

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In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2014.

Allen Leftwich

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